IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.5815 OF 2006

Nand Kishore. .. .. Petitioner

Vs.

The Commandant CISF UNIT ISP
Nashik & Ors. .. .. Respondents

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Shri A.V.Sivasankaran for the petitioner.

Smt.S.V.Bharucha with S/Shri I.K.Tripathi i/b G.C.Mishra for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &

V.M.KANADE, JJ

DATED : 26TH SEPTEMBER, 2006

P.C.

1. The petitioner challenges the order dated 9th May, 2005 by which the petitioner's services were terminated and further the order dated 30th August, 2005 passed by the appellate authority and the order dated 27th February, 2006 passed by the revisional authority whereby his appeal and the revision application were rejected.

2. The challenge to the impugned orders is on the ground that the petitioner was not given proper

opportunity of defending the charges levelled against him. The second ground of challenge is that there was no criminal case filed against the petitioner inspite of the allegation of molestation in that regard, and thirdly that neither the girl in question nor the independent witnesses were examined in support of the charges.

3. It is to be noted that both, the appellate and the revisional authority, have arrived at the concurrent finding on the point of sufficient opportunity being given to the petitioner to defend the charges levelled against him. Even on perusal of the records regarding inquiry, the learned advocate for the petitioner was not able to point out anything from the said record which could reveal that the petitioner was denied fair opportunity to defend the charges levelled against him. Undisputedly, at no point of time in the course of inquiry, the petitioner had made any written complaint about the failure on the part of the enquiry officer to give fair opportunity of defending the charges to the petitioner. Once the records show that there was no denial of the opportunity being given to the petitioner in defending the charges and the authorities below including the fact finding authority

have arrived at the concurrent finding about the fair opportunity being given to the petitioner to defend the charges levelled against him, there is no case made out for interference in the impugned orders on the same ground in writ jurisdiction.

4. As regards the failure to file criminal case against the petitioner inspite of the allegation being serious nature, that by itself will not absolve the employee from facing the disciplinary proceedings. Absence of criminal proceedings by itself will not absolve the petitioner from the disciplinary proceedings when the charges levelled against the petitioner are of serious nature.

5. As regards the allegation of failure on the part of the respondents to examine the girl and the independent witnesses is concerned, the authorities below on detail analysis of the evidence on record have arrived at the concurrent finding about the charges levelled against the petitioner that the respondents have established the charges levelled against the petitioner. It is not the criminal case where evidence of the prosecutrix could be necessary. In the disciplinary proceedings, if the circumstantial evidence led in the matter sufficiently establishes

the charges levelled against the delinquent, mere failure on the part of the authorities to examine the girl or any other independent witness, that by itself would not justify interference in the impugned orders in writ jurisdiction. In the case of analysis of the evidence, it is the quality of the evidence and not mere quantity of the evidence which is material. Since the authorities below on detail analysis of the evidence placed on record have arrived at the concurrent finding that the respondents have established the charges levelled against the petitioner, and no perversity or arbitrariness is disclosed in the findings in relation to the assessment of the evidence by the respondents, mere failure on the part of the respondents to examine the girl or the independent witnesses would not be a justification to interfere in the impugned orders in writ jurisdiction. In such cases an outsider being witnessed to such incidents does not arise.

6. In the result, therefore, there is no case made out for interference in the impugned orders in writ jurisdiction, and hence, the writ petition fails and is hereby rejected.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)